

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-30054-MAP

DEBORAH ST. PETER and
MATTHEW BOGACZ,
Plaintiffs

vs.

TOWN OF AGAWAM, TOWN OF AGAWAM
POLICE DEPT., AGAWAM POLICE CHIEF
ROBERT CAMPBELL, ANTHONY GRASSO,
JAMES WHEELER, RICHARD NILES,
KEITH BOPKO, JOHN MOCCIO,
OFFICER MCGOVERN,
Defendants

U.S. DISTRICT COURT
DISTRICT OF MASS.

APR 21 2004

FILED
CLERK OF COURT

DEFENDANTS' ANSWER AND DEMAND FOR TRIAL BY JURY

AS TO INTRODUCTION

As to the unnumbered paragraph and the allegations set forth therein, the defendants deny the allegations and deny that this Court has jurisdiction over the allegations set forth in the complaint.

AS TO JURISDICTION

As to the unnumbered paragraph, the defendants deny the allegations and deny that there is jurisdiction over the allegations set forth in the complaint.

AS TO PARTIES

1. The defendants neither admit nor deny the allegations contained in paragraph 1 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

2. The defendants neither admit nor deny the allegations contained in paragraph 2 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

3. The defendants neither admit nor deny the allegations contained in paragraph 3 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

4. The defendants neither admit nor deny the allegations contained in paragraph 4 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

5. The defendants neither admit nor deny the allegations contained in paragraph 5 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

AS TO FACTUAL BACKGROUND

6. The defendants neither admit nor deny the allegations contained in paragraph 5 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

7. The defendants neither admit nor deny the allegations contained in paragraph 7 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

8. The defendants neither admit nor deny the allegations contained in paragraph 8 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

9. The defendants neither admit nor deny the allegations contained in paragraph 9 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

10. The defendants neither admit nor deny the allegations contained in paragraph 10 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

11. The defendants neither admit nor deny the allegations contained in paragraph 11 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

12. The defendants neither admit nor deny the allegations contained in paragraph 12 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

13. The defendants neither admit nor deny the allegations contained in paragraph 13 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

14. The defendants neither admit nor deny the allegations contained in paragraph 14 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

15. The defendants neither admit nor deny the allegations contained in paragraph 15 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

16. The defendants neither admit nor deny the allegations contained in paragraph 16 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

17. The defendants neither admit nor deny the allegations contained in paragraph 17 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

18. The defendants neither admit nor deny the allegations contained in paragraph 18 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

19. The defendants neither admit nor deny the allegations contained in paragraph 19 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

20. The defendants neither admit nor deny the allegations contained in paragraph 20 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

21. The defendants neither admit nor deny the allegations contained in paragraph 21 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

22. The defendants neither admit nor deny the allegations contained in paragraph 22 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

23. The defendants neither admit nor deny the allegations contained in paragraph 23 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

24. The defendants neither admit nor deny the allegations contained in paragraph 24 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

25. The defendants neither admit nor deny the allegations contained in paragraph 25 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

26. The defendants neither admit nor deny the allegations contained in paragraph 26 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

27. The defendants neither admit nor deny the allegations contained in paragraph 27 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

28. The defendants neither admit nor deny the allegations contained in paragraph 28 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

29. The defendants neither admit nor deny the allegations contained in paragraph 29 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

30. The defendants neither admit nor deny the allegations contained in paragraph 30 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

31. The defendants neither admit nor deny the allegations contained in paragraph 31 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

32. The defendants neither admit nor deny the allegations contained in paragraph 32 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

33. The defendants neither admit nor deny the allegations contained in paragraph 33 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

34. The defendants neither admit nor deny the allegations contained in paragraph 34 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

35. The defendants neither admit nor deny the allegations contained in paragraph 35 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

36. The defendants neither admit nor deny the allegations contained in paragraph 36 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

37. The defendants neither admit nor deny the allegations contained in paragraph 37 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

38. The defendants neither admit nor deny the allegations contained in paragraph 38 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

39. The defendants neither admit nor deny the allegations contained in paragraph 39 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

40. The defendants neither admit nor deny the allegations contained in paragraph 40 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

41. The defendants neither admit nor deny the allegations contained in paragraph 41 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

42. The defendants neither admit nor deny the allegations contained in paragraph 42 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

43. The defendants neither admit nor deny the allegations contained in paragraph 43 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

44. The defendants neither admit nor deny the allegations contained in paragraph 44 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

AS TO COUNT I

45. The defendants repeat and reallege their answers to the allegations contained in paragraphs 1 through 44 of the plaintiffs' complaint and incorporate them herein by reference.

46. The defendants deny the allegations contained in paragraph 46 of the plaintiffs' complaint.

47. The defendants deny the allegations contained in paragraph 47 of the plaintiffs' complaint.

48. The defendants deny the allegations contained in paragraph 48 of the plaintiffs' complaint.

AS TO COUNT II

49. The defendants repeat and reallege their answers to the allegations contained in paragraphs 1 through 48 of the plaintiffs' complaint and incorporate them herein by reference.

50. The defendants deny the allegations contained in paragraph 50 of the plaintiffs' complaint.

51. The defendants deny the allegations contained in paragraph 51 of the plaintiffs' complaint.

AS TO COUNT III

52. The defendants repeat and reallege their answers to the allegations contained in paragraphs 1 through 51 of the plaintiffs' complaint and incorporate them herein by reference.

53. The defendants deny the allegations contained in paragraph 53 of the plaintiffs' complaint.

54. The defendants deny the allegations contained in paragraph 54 of the plaintiffs' complaint.

AS TO COUNT IV

55. The defendants repeat and reallege their answers to the allegations contained in paragraphs 1 through 54 of the plaintiffs' complaint and incorporate them herein by reference.

56. The defendants deny the allegations contained in paragraph 56 of the plaintiffs' complaint.

57. The defendants deny the allegations contained in paragraph 57 of the plaintiffs' complaint.

58. The defendants deny the allegations contained in paragraph 58 of the plaintiffs' complaint.

AS TO COUNT V

59. The defendants repeat and reallege their answers to the allegations contained in paragraphs 1 through 58 of the plaintiffs' complaint and incorporate them herein by reference.

60. The defendants deny the allegations contained in paragraph 60 of the plaintiffs' complaint.

61. The defendants deny the allegations contained in paragraph 61 of the plaintiffs' complaint.

62. The defendants deny the allegations contained in paragraph 62 of the plaintiffs' complaint.

AS TO COUNT VI

63. The defendants repeat and reallege their answers to the allegations contained in paragraphs 1 through 62 of the plaintiffs' complaint and incorporate them herein by reference.

64. The defendants deny the allegations contained in paragraph 64 of the plaintiffs' complaint.

65. The defendants deny the allegations contained in paragraph 65 of the plaintiffs' complaint.

AS TO COUNT VII

66. The defendants repeat and reallege their answers to the allegations contained in paragraphs 1 through 65 of the plaintiffs' complaint and incorporate them herein by reference.

67. The defendants deny the allegations contained in paragraph 67 of the plaintiffs' complaint.

68. The defendants deny the allegations contained in paragraph 68 of the plaintiffs' complaint.

AS TO COUNT VIII

68. (sic) The defendants repeat and reallege their answers to the allegations contained in paragraphs 1 through 68 of the plaintiffs' complaint and incorporate them herein by reference.

69. The defendants deny the allegations contained in paragraph 69 of the plaintiffs' complaint.

70. The defendants deny the allegations contained in paragraph 70 of the plaintiffs' complaint.

AS TO COUNT IX

71. The defendants repeat and reallege their answers to the allegations contained in paragraphs 1 through 70 of the plaintiffs' complaint and incorporate them herein by reference.

72. The defendants deny the allegations contained in paragraph 72 of the plaintiffs' complaint.

73. The defendants deny the allegations contained in paragraph 73 of the plaintiffs' complaint.

AS TO COUNT X

74. The defendants repeat and reallege their answers to the allegations contained in paragraphs 1 through 73 of the plaintiffs' complaint and incorporate them herein by reference.

75. The defendants deny the allegations contained in paragraph 75 of the plaintiffs' complaint.

76. The defendants deny the allegations contained in paragraph 76 of the plaintiffs' complaint.

77. The defendants deny the allegations contained in paragraph 77 of the plaintiffs' complaint.

SECOND DEFENSE

The defendants say that the plaintiff has failed to comply with the requirements of M.G.L. c. 258, §§ 2 and 4 and, as such, the complaint must be dismissed.

THIRD DEFENSE

The defendants say that it is immune from liability in this case.

FOURTH DEFENSE

The defendants say that the discretionary function exemption applies so as to preclude the imposition of liability in this case.

FIFTH DEFENSE

The defendants say that M.G.L. c. 258, § 10 precludes the imposition of liability in this case.

SIXTH DEFENSE

The defendants say that they are immune from liability as defendants' actions are privileged.

SEVENTH DEFENSE

The defendants cannot be held liable for violating the civil rights of the plaintiff as there has been no official or unofficial policy, custom, ordinance, regulation, or practice resulting in the deprivation of constitutional rights alleged.

EIGHTH DEFENSE

The defendants say that the claims alleged pursuant to M.G.L. c. 12, § 11H and I must be dismissed as there are no allegations of deprivation of constitutional and/or statutory rights by force, threat, intimidation, or coercion.

NINTH DEFENSE

The doctrine of qualified immunity precludes the imposition of liability.

TENTH DEFENSE

The defendants say that at the time of the alleged incident the plaintiff was guilty of a violation of the law which contributed to the alleged incident.

ELEVENTH DEFENSE

The defendants say that this action was not commenced within the time required by the laws made and provided therefor.

TWELFTH DEFENSE

The defendants state that the plaintiffs are barred from receiving punitive damages based upon the relevant statutory law and case law.

THIRTEENTH DEFENSE

The defendants say that the injuries and damages alleged were caused in whole or in part by the plaintiffs' own negligence, which was as great or greater than any negligence of the defendants.

FOURTEENTH DEFENSE

The defendants say that if they were negligent as alleged which they specifically deny, the negligence of the plaintiffs was greater than the alleged negligence of the defendants and, therefore, the plaintiffs cannot recover.

FIFTEENTH DEFENSE

The defendants say that the plaintiffs' own negligence contributed to the cause of the accident and, therefore, the recovery of damages, if any, must be reduced in accordance with the law.

SIXTEENTH DEFENSE

The defendants say that the injuries and damages alleged were caused, in whole or in part, by the plaintiffs' own negligence.

SEVENTEENTH DEFENSE

The defendants say that the accident as alleged in the plaintiffs' complaint was not caused by any person for whose conduct the defendants are legally responsible.

EIGHTEENTH DEFENSE

The defendants say that at the time of the alleged accident the plaintiff were guilty of a violation of the law which contributed to the alleged accident.

NINETEENTH DEFENSE

The defendants say that this action was not commenced within the time required by the laws made and provided therefor.

TWENTIETH DEFENSE

The defendants say that due written notice of the time, place, and cause of the plaintiffs' injuries was not given by the plaintiffs to the said defendants, and as a result the defendants have been prejudiced.

TWENTY-FIRST DEFENSE

The plaintiffs are not entitled to recover as the complaint does not set forth a claim upon which relief can be granted.

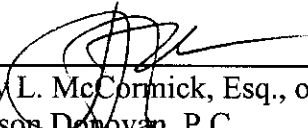
TWENTY-SECOND DEFENSE

The defendants say that if plaintiffs were injured as alleged, such was due to the acts or negligence of another, which constitute an intervening, superseding cause and, therefore,

defendants are not liable.

THE DEFENDANTS HEREBY DEMAND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

THE DEFENDANTS
TOWN OF AGAWAM, TOWN OF
AGAWAM POLICE DEPT., AGAWAM
POLICE CHIEF ROBERT CAMPBELL,
ANTHONY GRASSO, JAMES
WHEELER, RICHARD NILES,
KEITH BOPKO, JOHN MOCCIO,
OFFICER MCGOVERN

By 
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BBO No.: 329740

CERTIFICATE OF SERVICE

I, Jeffrey L. McCormick, Esq., hereby certify that on this 19 day of April, 2004, I served a copy of the above upon the parties in the action by mailing, postage prepaid, to counsel, Dawn D. McDonald, Esq. and Lisa Brodeur-McGann, Esq., Cooley Shrair P.C., 1380 Main Street, Springfield, MA 01103.

Subscribed under the penalties of perjury.


Jeffrey L. McCormick, Esq.